bankrupt in Ipoh High Court Civil Suit No. 296 of 1966 an Order was made on April 1, 1968, confirming the partnership and ordering accounts to be taken of all partnership dealings between Sit Yu Yoong and the bankrupt. The bankrupt then in 1969 and 1970 entered private caveats upon the titles to several pieces of land belonging to Sit Yu Yoong which are specified in the application before me. On August 27, 1973, a Receiving Order was made against the firm of Eastern Building Company and an adjudication order made against Sit Yu Yoong. Receiving and Adjudication Orders had also been made against the bankrupt as a partner of the firm on May 25, 1973, in the same application.

Some of the lands in question are subject to charges executed by Sit Yu Yoong in favour of Chung Khiaw Bank Ltd., and these are the subject matter of an application by the bank for an order of sale in Ipoh High Court Originating Summons No. 481 of 1971. There are several intervenors in those proceedings and their efforts to come to an amicable settlement with the bank have been impeded by the private caveats lodged by the bankrupt.

It is clear that in view of the bankruptcy of Sit Yu Yoong the bankrupt no longer has any remedy against any properties belonging to her bankrupt partner, and if ultimately any moneys are in fact found due to the bankrupt from Sit Yu Yoong on accounts taken pursuant to the order of April 1, 1968, the bankrupt would only be able to claim in the bankruptcy of Sit Yu Yoong by lodging a proof of debt. She would have no enforceable right against the caveated properties.

When the application was heard in chambers before me, Mr. Rahim Noor, appearing for the bankrupt, agreed that the bankrupt has no right against the caveated properties but stated that she had deposited a sum of $30,000 with her solicitors which she wished to apply to pay off the creditors in both bankruptcies in order to deal with the caveated properties. I allowed an application for further argument in open court entirely out of curiosity as to what further points could be taken on behalf of the bankrupt in view of the concession made that she had in fact no right against the lands in question.

On further argument, Mr. Lim Cho Hock, appearing for the bankrupt, submitted that there was an Order made in Civil Suit No. 296 of 1966 on December 16, 1969, extending the period of the private caveats lodged by her and ordering them to remain in force until the disposal of the enquiry into the accounts of the partnership and satisfaction of any sum found due to the bankrupt. Mr. Lim Cho Hock also then agreed that the bankrupt has no right against the caveated properties. The short answer to the point raised about the Order of December 16, 1969, which I have referred to is that the bankruptcy of Sit Yu Yoong has radically changed the position, resulting in the bankrupt having no right against the caveated properties, and it is furthermore open to the Official Assignee, who has stepped into the shoes of the bankrupt by virtue of her bankruptcy, to ask for a withdrawal of the caveats in the circumstances, as indeed it would be open to her to do at any time notwithstanding the Order of December 16, 1969.

In the circumstances and in view of the bankruptcy of Sit Yu Yoong, it is abundantly clear that the bankrupt no longer has any remedy against the property of Sit Yu Yoong and her only recourse in the event of any claim against her bankrupt partner would be to join the general pool of unsecured creditors in the bankruptcy of Sit Yu Yoong. I found therefore no merit at all in her objection, and confirmed my Order made in Chambers that the Official Assignee be at liberty to withdraw the private caveats lodged by the bankrupt against the lands registered in the name of and belonging to Sit Yu Yoong.

Order accordingly.

Solicitors: *Maxwell, Kenion, Cowdy & Jones.*

MALAYAN PINEAPPLE COMPANY SDN. BHD. v. FOOD INDUSTRY EMPLOYEES UNION

[O.C.J. (Mohamed Azmi J.) November 8, 1975]

[Kuala Lumpur — Originating Motion No. 64 of 1974]

Administrative Law — Certiorari — Application for Order of Certiorari to quash award of Industrial Court — Applicant claimed that award was wrong in law, and Industrial Court had, in making the award, acted in excess of its jurisdiction — Employment Ordinance, 1955 s. 60G — Industrial Relations Act, No. 35 of 1967, ss. 26 and 27(5) & (6).

The applicant had terminated the services of their employees (hereinafter called the claimants) on the ground that the company had been running at a loss. However, it did not make any redundancy payments to the claimants. The Industrial Court considered the provision of section 60G of the Employment Ordinance 1955 and came to the conclusion that all the claimants were entitled to retrenchment benefits except those who had been in continuous service with the company for less than three years. The court also held that the applicant company was in a financial position to make redundancy payments and awarded payment to those who had worked for three years and over.

The applicant submitted that the said award was wrong in law on the ground that the Industrial Court had no power under section 60G of the Employment Ordinance to award retrenchment benefits, and therefore it had acted in excess of its jurisdiction.

Held, dismissing the application: (1) as section 60G of the Employment Ordinance provided for the qualification period for making retrenchment benefit, it followed that those who qualify must have a legal right to such benefit;

(2) the Industrial Court was entitled to make an award for the settlement of any differences or disputes arising from the relationship between an employer and workmen and their trade unions, even if there was no express obligation on the part of the employer to make the payment as awarded, subject only to the qualification that such award was not prohibited by the provision of any statutory law;

(3) the Industrial Court had not acted in excess of its jurisdiction in ordering that the claimants be paid retrenchment benefits.

ORIGINATING MOTION

S. Kulasegaran for the applicant.

D. Puthucheary for the respondent.

Mohamed Azmi J.: This is an application by Notice of Motion by the Malayan Pineapple Company Sendirian Berhad, Klang, for an Order of *Certiorari* to remove into this court for the purpose of quashing the award dated June 18, 1974 made by the Industrial Court *vide* Industrial Court Case No. 17 of 1974 on the following grounds: —

(a) The award is wrong in law.

(b) The Industrial Court is wrong in law in holding that under section 60G of the Employment Ordinance, 1955 the claimants as per Schedule B of the award are entitled to retrenchment benefits.

(c) The Industrial Court has acted in excess of its jurisdiction in ordering that the claimants as per Schedule B of the award be paid retrenchment benefits.

The facts in this case are not in dispute. The claimants are members of the Food Industry Employees Union who are employed by the applicant. Their services were terminated on November 17, 1973 on the ground that the company was closing down. The said company, however, did not pay the claimants any redundancy payments for the service rendered by them to the company, and the union claims on their behalf redundancy payments of 1½ months' wages for each year of service. In its Statement of Reply, the company stated that its business started in 1959 and, except for three years' profit, had been running at a steady loss up to the date of closure in November 1973. Under the circumstances, it was forced to close its factory, with the result that the services of all its employees, except seven, were terminated. It was therefore averred that no redundancy payments were payable in the circumstances.

It is clear from the pleadings that from the time the dispute was referred by the Minister to the Industrial Court up to the time when the award was made, the competency of the Industrial Court to entertain the dispute regarding redundancy claims was never challenged. In its award, the court quite correctly held that there were two issues to be decided in the dispute, namely, whether the claimants were entitled to retrenchment benefits and, if they were so entitled, what should be the quantum of such benefits. Having regard to the provision of section 60G of the Employment Ordinance, 1955, the court came to the conclusion that all the claimants were entitled to retrenchment benefits except those who had been in continuous service with the company for less than three years. On the second issue, the court came to the conclusion that the company was in a financial position to make redundancy payments, and on the evidence before it, the court determined that for those who had worked for three years and over the company should pay them seven days pay for each year of service.

Before me, it is now forcibly argued by counsel for the company that the said award is wrong in law on the ground that the Industrial Court has no power under section 60G of the Employment Ordinance to award retrenchment benefits, and therefore it has acted in excess of its jurisdiction.

Section 60G of the Employment Ordinance, 1955 provides as follows:

"No labourer who has been in continuous service with an employer for less than three years shall be entitled to any retrenchment benefit on the termination of his service by the employer on the ground of redundancy or by reason of any reorganisation of the employer's profession, business trade or work."

By comparing the wordings of the section with other similar provisions in the ordinance, particularly sections 60D, 60E and 60F, pertaining to holidays, annual leave and sick leave, it is argued on behalf of the company that on the literal construction of section 60G there is no obligation on the part of the employer to pay retrenchment benefits to its employees. It is submitted that this section merely provides a qualifying period of making a claim for retrenchment benefits without any obligation to pay, so that when the company closes down and a union puts in a claim for retrenchment benefits it must be subjected to the qualification period, and the employer can either entertain the claim and negotiate on the quantum or reject the claim outright on the ground that there is no such entitlement. Mr. Puthucheary on behalf of the union, however, argues that there is nothing in section 60G or for that matter in any provision of the Employment Ordinance to prohibit the Industrial Court from making the award for retrenchment benefits. Having regard to the preamble to the Industrial Relations Act, the court is entitled to make the award as it did subject only to the qualification imposed by section 60G that the benefits should not be given to employees who do not have the requisite qualification as to period of service. In this case, it is my view that both the provisions in the Employment Ordinance and the Industrial Relations Act ought to be read together. I do not agree that under section 60G there is no obligation on the part of an employer to pay retrenchment benefits. Since the section provides for qualification period for making retrenchment benefit, then it follows that those who qualify must have a legal right to such benefit. Where such right exists, I do not think it is necessary for express words in the section to create obligation on the part of the employer to satisfy the legal right. Any other interpretation would render the section meaningless. In the alternative, there is no prohibition in section 60G or any other provisions in the Employment Ordinance for such payments to be made by an employer. Indeed, it is conceded by counsel for the company that in a claim for retrenchment benefit the company can either reject the claim outright or entertain it. From the pleadings before the Industrial Court, the company's refusal to meet the union's claim was not based on any absence of legal obligation on its part to make the payments, but solely on the ground that it was not in a financial position to do so. That being the case, I am of the view that the company should not now be heard to complain that the Industrial Court was acting in excess of jurisdiction in awarding the retrenchment benefits on the interpretation of section 60G. It is submitted that express words would be necessary if they were intended that the Industrial Court should have power to vary the application of any statutory provision, and that the general terms of section 26 and section 27(5) and (6) of the Industrial Relations Act No. 35 of 1967 do not suffice for this, and that the Industrial Court cannot override the provisions of statutory law. (Authorities cited are at pages 169 and 170 Industrial Disputes Law in Malaysia by C.P. Mills). But, in the present case, I do not think that the Industrial Court by making the award has overridden any provisions of statutory

law. The Industrial Court is not prohibited by section 60G of the Employment Ordinance from settling disputes regarding retrenchment benefit, especially in the present case where on the pleadings the question of jurisdiction of the court to adjudicate had never been challenged until after the award was made. As stated in the preamble to the Industrial Relations Act, 1967, the Act is to provide for the regulation of the relations between employers and workmen and their trade unions and the prevention and settlement of any differences or disputes arising from their relationship and generally to deal with trade disputes and matters arising therefrom. Under section 27(5), the court shall act according to equity, good conscience and the substantial merits of the case without regard to technicalities and legal form; and under subsection (6), in making the award, the court shall not be restricted to the specific relief claimed by the parties or to the demands made by the parties in the course of the trade dispute but may include in the award any matter or thing which it thinks necessary or expedient for the purpose of settling the trade dispute. Thus, subject only to the qualification that it cannot override the provisions of statutory law, the Industrial Court has power in relation to a trade dispute referred to it by the Minister to make an award relating to all or any of the issues in dispute. In the instant case, the dispute is in respect of retrenchment benefits, and as stated earlier on, there is no statutory law which prohibits the Industrial Court from making an award on retrenchment benefits. The so-called restriction imposed by section 60G of the Employment Ordinance is in fact non-existent. The section merely prohibits the court from making such an award to labourers who have not been in continuous service with an employer for more than three years. To my mind, the Industrial Court is entitled to make an award for the settlement of any differences or disputes arising from the relationship between an employer and workmen and their trade unions, even if there is no express obligation on the part of the employer to make the payment as awarded, subject only to the qualification that such award is not prohibited by the provision of any statutory law. In the present case, however, I hold that the applicant is in fact under legal obligation to pay the retrenchment benefits as the claimants are entitled to such benefits under section 60G of the Employment Ordinance. As such, the award made is not wrong in law; and that for reasons already stated earlier on, the Industrial Court has not acted in excess of its jurisdiction in ordering that the claimants as per Schedule B of the award be paid retrenchment benefits.

In the event, I dismiss this motion with costs.

Motion dismissed.

Solicitors: *Ranjit, Thomas & Kula; Skrine & Co.*

CHESEBROUGH-PONDS INTERNATIONAL LTD. v. DIRECTOR-GENERAL OF INLAND REVENUE

[A.C.J. (Mohamed Azmi J.) November 22, 1975]
[Kuala Lumpur — Originating Motion No. 13 of 1973]

Revenue Law — Development tax — Whether development tax payable on royalty received by taxpayer — Taxpayer owning patent and trade mark — Grant of exclusive licence on payment of royalty — Whether taxpayer has development income — Interpretation of taxing statute — Income Tax Ordinance, 1947, s. 33A — "Property" — Meaning of — Supplementary Income Tax Act, 1967, s. 13(2).

In this case the appellant company incorporated in Canada had certain patents and trade marks and they gave an exclusive licence to a company in Malaysia to purchase, manufacture and distribute goods covered by the patent and trade mark. The appellant company received royalties on the sales of the goods manufactured and sold in Malaysia. They were assessed to development tax for the years of assessment 1968-1971. On appeal to the Special Commissioners it was argued for the Director-General of Inland Revenue that the royalties received by the appellant were development income in respect of the letting of its property within the meaning of section 33A of the Income Tax Ordinance 1947 and section 13 of the Supplementary Income Tax Act, 1967. The Special Commissioners found that the appellant company had a development source and development income in respect of trade or business. An appeal by way of case stated was brought to the High Court at the instance of both parties.

Held: (1) royalties as distinguished from rents or premiums received for letting out property situated in Malaysia do not constitute a development source or development income under section 33A of the Income Tax Ordinance, 1947;

(2) under section 13(2) of the Supplementary Income Tax Act, 1967 however, once a person derives income from property situated in Malaysia by letting it out he has a development source and it did not matter whether he let it out for rent or for royalty;

(3) in the present case, the appellant company had a development source for the years of assessment 1968 to 1971 by letting out its property in return for royalty and as such the royalties received during that period are assessable to development tax;

(4) the Director-General of Inland Revenue was correct in conceding that the appellant company was not engaged in a trade or business at the relevant period.

Cases referred to:-

(1) *Oriental Bank* v. *Wright* (1889) L.R. App. Cas. 844, 856.
(2) *Re Micklethwait* 156 E.R. 910.
(3) *Partington* v. *Attorney-General* L.R. 4 App. Cas. 100, 122.
(4) *Lord Advocate* v. *Fleming* [1897] App. Cas. 145, 151-152.
(5) *Tennant* v. *Smith* [1892] App. Cas. 150, 154.
(6) *Cape Brandy Syndicate* v. *Inland Revenue Commissioner* [1921] 1 K.B. 69, 71; (1921) 12 T.C. 358, 366.
(7) *In re a Taxpayer* [1956] M.L.J. 253.
(8) *Commissioner of Income Tax* v. *Hanover Agencies Ltd.* [1967] 1 App. Cas. 681, 688.
(9) *Victoria Park Racing and Recreation Grounds Co. Ltd.* v. *Federal Commissioner of Taxation* (1934) 52 C.L.R. 9, 23-25.
(10) *Selangor Pilot Association (1946)* v. *Government of Malaysia & Anor.* [1975] 2 M.L.J. 66.

ORIGINATING MOTION.

Peter Mooney for the appellant.

Zulkifli Mahmud (Senior Federal Counsel) for the respondent.

Azmi J.: This is an appeal by way of Case Stated by the Special Commissioners of Income Tax under